

Marlene H. Dortch
Secretary
Federal Communications Commission
TW-A325
445 Twelfth St., SW
Washington, DC 20554



Re: *Notice of Ex Parte Presentation in MB Docket No. 98-120, 03-15, 04-210.*

Dear Ms. Dortch:

On January 31, 2005, Harold Feld of Media Access Project, Ben Scott of Free Press, Gloria Tristani of the United Church of Christ, Celia Wexler of Common Cause, and Meredith McGehee of the Campaign Legal Center ("PIO Representatives") met with Commissioner Kathleen Abernathy and Matthew Brill, Senior Legal Advisor, on public interest obligations for digital broadcasters and multicast must-carry.

PIO Representatives stated that the Commission should not resolve the multicast must-carry rules before it resolves the outstanding PIO items. PIO has waited five years, and has no resolution, whereas multicast must carry is on reconsideration of an existing Commission Order denying the request. PIO Reps also stated that even in the absence of economic harm, multicast must carry could be justified under the *Turner* standard by requiring that each stream carried programming that served the "government purpose, of the highest order" identified in *Turner* of maintaining an informed citizenry with suitable access to local content. That 85% of viewers receive their television via cable makes public interest programming provided via free over the air television more valuable, not less valuable, since – as the Commission itself found in its June 2003 media ownership order – other cable programming is generally national in focus.

Finally, PIO Representatives urged that the Commission should not draft the order in a way that prohibited Commission regulation in individual cases. Already there are reports of cable companies using content from local affiliates to populate their digital tier, in effect using the DTV transition to sell a cable service at a local affiliate's expense. Where a local affiliate would not produce high-quality local programming absent Commission intervention, and the record supports such intervention, the Commission should retain the authority to act. In addition, it is important to send a signal to the market that the Commission will not completely abandon small broadcast stations or small cable systems negotiating for digital content from large networks. The Commission should make clear that if it decides on the basis of this record not to impose industry-wide must carry, that the Commission will still consider complaints filed by viewers and licensees in the event of market abuses.

In accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206, this letter is being filed with your office. If you have questions, please do not hesitate to contact me.

Respectfully Submitted,
Harold Feld
Senior Vice President

CC: Commissioner Abernathy
Matt Brill